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49 CFR Ch. X (10–1–07 Edition)

section 1105.8) for the following actions:

(1) Motor carrier, broker, or freight forwarder licensing and water carrier licensing not included in section 1105.6(b)(6);

(2) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), including (but not limited to) all of the following actions that meet this criterion:

(i) An acquisition, lease, or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger, or acquisition of control under 49 U.S.C. 11343 that does not come within subsection (b)(4) of this section.

(ii) Transactions involving corporate changes (such as a change in the ownership or the operator, or the issuance of securities or reorganization) including grants of authority to hold position as an officer or director;

(iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;

(iv) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity;

(v) Approval of motor vehicle rental contracts, and self insurance;

(vi) Determinations of the fact of competition;

(3) Rate, fare, and tariff actions;

(4) Common use of rail terminals and trackage rights;

(5) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

(6) Discontinuance of trackage rights where the affected line will continue to be operated; and

(7) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.

(d) The Board may reclassify or modify these requirements for individual proceedings. For actions that generally require no environmental documentation, the Board may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and

either an EA or an EIS will be prepared. For actions generally requiring an EA, the Board may prepare a full EIS where the probability of significant impacts from the particular proposal is high enough to warrant an EIS. Alternatively, in a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of § 1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact. Any request for reclassification must be in writing and, in a rail construction, should be presented with the prefiling notice required by § 1105.10(a)(1) (or a request to waive that prefiling notice period).

(e) The classifications in this section apply without regard to whether the action is proposed by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

§ 1105.7 Environmental reports.

(a) *Filing.* An applicant for an action identified in § 1105.6 (a) or (b) must submit to the Board (with or prior to its application, petition or notice of exemption) except as provided in paragraph (b) for abandonments and discontinuances) an Environmental Report on the proposed action containing the information set forth in paragraph (e) of this section.

(b) At least 20 days prior to the filing with the Board of a notice of exemption, petition for exemption, or an application for abandonment or discontinuance, the applicant must serve copies of the Environmental Report on:

(1) The State Clearinghouse of each State involved (or other State equivalent agency if the State has no clearinghouse);

(2) The State Environmental Protection Agency of each State involved;

(3) The State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;

(4) The head of each county (or comparable political entity including any Indian reservation) through which the line goes;

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(5) The appropriate regional offices of the Environmental Protection Agency;

(6) The U.S. Fish and Wildlife Service;

(7) The U.S. Army Corps of Engineers;

(8) The National Park Service;

(9) The U.S. Soil Conservation Service;

(10) The National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; and

(11) Any other agencies that have been consulted in preparing the report. For information regarding the names and addresses of the agencies to be contacted, interested parties may contact SEA at the address and telephone number indicated in § 1105.3.

(c) *Certification.* In its Environmental Report, the applicant must certify that it has sent copies of the Environmental Report to the agencies listed and within the time period specified in paragraph (b) of this section and that it has consulted with all appropriate agencies in preparing the report. These consultations should be made far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input. Finally, in every abandonment exemption case, applicant shall certify that it has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives, and to how it may participate in the STB proceeding.

(d) *Documentation.* Any written responses received from agencies that were contacted in preparing the Environmental Report shall be attached to the report. Oral responses from such agencies shall be briefly summarized in the report and the names, titles, and telephone numbers of the persons contacted shall be supplied. A copy of, or appropriate citation to, any reference materials relied upon also shall be provided.

(e) *Content.* The Environmental Report shall include all of the information specified in this paragraph, except to the extent that applicant explains why any portion(s) are inapplicable. If an historic report is required under

§ 1105.8, the Environmental Report should also include the Historic Report required by that section.

(1) *Proposed action and alternatives.* Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

(2) *Transportation system.* Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

(3) *Land use.* (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

(4) *Energy.* (i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.

(5) *Air.* (i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide

and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(6) *Noise.* If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

(7) *Safety.* (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(8) *Biological resources.* (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State

parks or forests will be affected, and describe any effects.

(9) *Water.* (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

(10) *Proposed Mitigation.* Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

(11) *Additional Information for Rail Constructions.* The following additional information should be included for rail construction proposals (including connecting track construction):

(i) Describe the proposed route(s) by State, county, and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.

(ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.

(iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, the an-

ticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force, and proposed maintenance-of-way practices.

(v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§1105.7(e)(4), (5), or (6) are met.

(vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.

(vii) Discuss societal impacts, including expected change in employment during and after construction.

(f) *Additional information.* The Board may require applicants to submit additional information regarding the environmental or energy effects of the proposed action.

(g) *Waivers.* The Board may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Board to evaluate the environmental impacts of the proposed action.

[56 FR 36105, July 31, 1991; 56 FR 49821, Oct. 1, 1991, as amended at 58 FR 44619, Aug. 24, 1993; 60 FR 32277, June 21, 1995; 61 FR 67883, Dec. 24, 1996; 64 FR 53268, Oct. 1, 1999; 69 FR 58366, Sept. 30, 2004]

§ 1105.8 Historic Reports.

(a) *Filing.* An applicant proposing an action identified in §1105.6 (a) or (b), or an action in §1105.6(c) that will result in the lease, transfer, or sale of a railroad's line, sites or structures, must submit (with its application, petition or notice) the Historic Report described in paragraph (d) of this section, unless excepted under paragraph (b) of this section. This report should be combined with the Environmental Report where one is required. The purpose of the Historic Report is to provide the Board with sufficient information to conduct the consultation process required by the National Historic Preservation Act.